

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-N-5907-99
MJGormley

date: OCT 20 1999

to: District Director, New England District
Chief, Examination Branch 1
Attn: Jack Quinn, Revenue Agent: E:1760

from: District Counsel, New England

subject: [REDACTED]
UIL# 6901.00-00;1502.77-00
Earliest Statute: [REDACTED]

DISCLOSURE STATEMENT

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This refers to the memorandum from your office, received September 28, 1999, requesting specific guidance on extending the statute of limitations on assessment with respect to [REDACTED] (EIN: [REDACTED]) for the years ending [REDACTED] and [REDACTED]. The facts as presented are set forth below.

██████████'s federal income tax returns for the periods ending ██████████, ██████████ and ██████████, are presently being examined by your office. The statute of limitations for the period ended ██████████ is presently open until ██████████ under a consent which was executed on Form 872. The statute of limitations for the period ended ██████████ is open under the three year period of limitations until ██████████. You are seeking our advice regarding protection of the statute of limitations of ██████████'s federal income tax liabilities for the periods ended ██████████ and ██████████. Specifically, you have asked whether a Form 872 should be utilized and if so, how should it be drafted. With regard to the execution of the consent, you ask what specific language is required by the corporate officer executing the consent. In addition, whether there are issues of potential transferor/transferee liability requiring the preparation of Forms 977 or 2045. You have provided us with a copy of ██████████ Form 1120 for the year ending ██████████, as well as a copy of a "Cross Receipt" issued by ██████████ to ██████████, dated ██████████.

██████████ develops, manufactures, markets, sells and supports a comprehensive line of ██████████ products and services. It was originally incorporated in ██████████ in Delaware under the name of ██████████. In ██████████, ██████████ and ██████████ effected a merger of the two companies, whereby ██████████ formed a merger subsidiary called ██████████ which merged with and into ██████████. In connection with the merger, ██████████ changed its name to ██████████ and the subsidiary was known as ██████████ or ██████████.

In ██████████, ██████████ merged with ██████████ a Canadian corporation, via the creation by ██████████ of a merger subsidiary called ██████████. Pursuant to the merger agreement provided by you, ██████████ merged with ██████████, with ██████████ surviving. Further, the separate corporate existence of ██████████ ceased and ██████████ survived and continued to exist as a Delaware corporation. ██████████ was then a wholly owned subsidiary of ██████████. The merger agreement stated that the parties intended the merger to qualify as a reorganization under I.R.C. § 368(a). The agreement specifically provided that all the property, right, privileges, powers and franchises of ██████████ and ██████████ will be vested in the surviving corporation, and all debt, liabilities and duties of both corporations shall become

the debt, liabilities and duties of the surviving corporation. In addition to [REDACTED], [REDACTED] is still in existence. You previously advised us that following the merger, the EINs for [REDACTED] and [REDACTED] remained the same.

By way of background, in an earlier opinion released to your office in [REDACTED], we concluded based on the above facts that a Form 872 executed by a current officer of [REDACTED] would extend the period for assessment of tax with respect to the [REDACTED] return of [REDACTED]. At that time, we also advised you that a current officer of [REDACTED] in his or her capacity as an officer of the corporation was the proper party to execute a Form 872, Consent to Extend the Time to Assess Tax, for [REDACTED] for the [REDACTED] tax year. Treas. Reg. § 1.1502-77(a) and (c). See also Rev. Rul. 83-41. On the facts provided at that time there did not appear to be potential transferee liability. [REDACTED] had survived the reorganization, retaining the same EIN and remaining as the common parent to [REDACTED]. Accordingly, it did not appear necessary to secure either Form 2045, Transferee Agreement or Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Liability Against a Transferee or Fiduciary, in this case. In our November 1998 opinion, we also stated that our advice regarding the taxpayer's [REDACTED] tax year was also applicable to fiscal years [REDACTED] and [REDACTED].

In your current request for advice, you have given us additional information regarding [REDACTED]. [REDACTED] is also the owner of all the issued and outstanding shares of [REDACTED], a corporation organized and existing under the laws of Delaware. On [REDACTED], [REDACTED] transferred and assigned all of its [REDACTED] shares of common and [REDACTED] share of preferred of [REDACTED], all of the issued and outstanding shares, to [REDACTED] in exchange for [REDACTED] shares of [REDACTED]. This was considered to be a contribution of capital pursuant to I.R.C. § 351. As of [REDACTED], [REDACTED] became a part of [REDACTED]'s consolidated group and will join with [REDACTED] in filing a consolidated return as a subsidiary of [REDACTED]. [REDACTED] filed a consolidated federal income tax return for the period ended [REDACTED] and will file a consolidated short year federal income tax return for the period ended [REDACTED].

I.R.C. § 6501(a) provides that as a general rule, tax must be assessed within three years of the filing date of the return. In accordance with I.R.C. § 6501(c)(4), the taxpayer and the IRS may consent in writing to extensions of time for making assessments. The regulations under this Code section do not

specify who may sign such consents; however, the Service generally applies the rules applicable to execution of the original returns to consents to the extension of time to make an assessment. A corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the return. See Rev. Rul. 83-41, 1983-1 CB 349.

In addition, the common parent and each subsidiary that was a member of the consolidated group during any part of the consolidated return year are severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a). With certain exceptions not applicable here, the common parent is the sole agent for each member of the group and is duly authorized to act in its own name with respect to all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). Therefore, the common parent in its own name will give waivers, and any waiver so given, is also considered as having been given or executed by each subsidiary. Treas. Reg. § 1.1502-77(a). Thus, an agreement entered into by the common parent extending the time for assessment of tax for a consolidated return year applies to each corporation which was a member of the group during any part of the taxable year, unless the District Director agrees to the contrary. Treas. Reg. § 1.1502-77(c). Accordingly, the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a).

Here, our earlier advice regarding the execution of the Forms 872 for the years ended [REDACTED] and now, [REDACTED] is still applicable. A Form 872 executed by a current officer of [REDACTED], in his or her capacity as an officer of the corporation, will extend the period for assessment of tax with respect to the returns of [REDACTED] for these years. See Treas. Reg. § 1.1502-77(a) and (c). See also Rev. Rul. 83-41. On the facts provided, there does not appear to be potential transferee liability. [REDACTED] survives and retains the same EIN. Accordingly, it does not appear necessary to secure either Form 2045, Transferee Agreement or Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Liability Against a Transferee or Fiduciary.

If you need further assistance, please contact the undersigned at 617/565-7858.

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By:

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